

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LABORERS' PENSION FUND and)	
JAMES S. JORGENSEN, administrator)	
of the Fund,)	
)	Case No.: 16-cv-5865
Interpleader Plaintiffs,)	
)	
v.)	
)	
ANKA V. MISCEVIC and the ESTATE of M.M.,)	
)	
Interpleader Defendants.)	

INTERPLEADER COMPLAINT

Interpleader Plaintiffs Laborers' Pension Fund ("Fund") and James S. Jorgensen ("Jorgensen"), Administrator of the Fund, by and through their attorneys, Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich, bring this interpleader complaint against Interpleader Defendants Anka V. Miscevic and the Estate of M.M. and allege as follows:

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Accordingly, this Court has jurisdiction over this action under 28 U.S.C. § 1331.

2. This Court also has jurisdiction pursuant to Section 502(e) of ERISA, 29 U.S.C. § 1132(e), because the Fund seeks interpleader, a form of equitable relief available under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

3. Venue lies in this Court under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), as the Fund is administered by its Trustees within this District.

PARTIES

4. Plaintiff Fund is a multiemployer defined benefit pension plan within the meaning of Section 3(37) of ERISA, 29 U.S. C. § 1002(37). The Fund has offices and conducts business at 11465 Cermak Road Westchester, Illinois 60154.

5. Plaintiff Jorgensen is the Administrator of the Fund, and has been duly authorized by the Fund's Trustees to initiate litigation on behalf of the Fund. With respect to such matters, Jorgensen is a fiduciary of the Fund within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A). Pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. §§ 1132(a)(3), Jorgensen, as a fiduciary, is authorized to bring this action on behalf of the Plan, its participants, and its beneficiaries.

6. Defendant Anka V. Miscevic ("Anka") is an individual who resides in Illinois. Her late husband, Zeljko M. Miscevic ("Zeljko"), was a participant in the Fund.

7. M.M. is the thirteen-year-old son of Anka and Zeljko and an Illinois resident. Following Zeljko's death in January of 2014, legal proceedings commenced in the Eighteenth Judicial Circuit Court, Du Page County to create an estate for M.M. ("the Estate"). Those proceedings were captioned In re the Estate of M.M., a Minor, Case Number 2014 P 21. On March 24, 2014, Judge Paul Fullerton appointed Snezana Jajic Kaplarevic guardian of the Estate.

FACTS

8. Through his work as a union laborer, Zeljko earned a vested pension benefit from the Fund. As a defined benefit pension plan, the Fund would have paid this benefit to Zeljko upon his retirement as a monthly annuity for his life.

9. Zeljko had not yet commenced his benefit from the Fund when he died on January 9, 2014.

10. The State of Illinois charged Anka with First Degree Murder of Zeljko in criminal proceedings in the Eighteenth Judicial Circuit Court, Du Page County captioned People of the State of Illinois v. Anka Miscevic, Case Number 14 CF 58.

11. Stipulations entered at trial reflected that Anka confessed to stabbing Zeljko with a large kitchen knife in his sleep and then striking him in the head with a baseball bat to prevent him from calling the police.

12. The stipulations entered at trial further reflected that Anka told the police that she loved Zeljko but nonetheless attacked him because she feared that he intended to kill her and her family.

13. News reports indicate that, according to her attorney, Anka has a history of serious mental illness involving paranoid delusions.

14. On May 29, 2015, at the conclusion of Anka's bench trial, Judge Liam Brennan found that the prosecution established beyond a reasonable doubt the elements of First Degree Murder and that Anka intended to kill Zeljko "without legal justification." Judge Brennan found Anka not guilty, however, by reason of insanity.

15. As required by ERISA, the Fund's governing documents provide that when a married participant dies before commencing his benefit, his wife shall receive a Surviving Spouse Pension, which is a monthly annuity payable for her life.

16. The Fund's governing documents also provide that when a participant dies and does not have a surviving spouse but does have a minor child, the child shall receive a Minor Child Benefit, which is a monthly benefit payable until the child reaches the age of 21.

17. The Fund's governing documents do not specifically address whether a claimant who intentionally kills a participant is entitled to a benefit from the Fund.

18. On June 23, 2015, the attorney then representing Zeljko's estate and Snezana Jajic Kaplarevic ("Kaplarevic") as administrator of that estate, wrote the Fund to notify it of the outcome of the criminal case against Anka. In his letter, the attorney requested that the Fund commence paying a Minor Child Benefit to M.M. pursuant to 755 ILCS 5/2-6, a section of the Illinois Probate Act of 1975 that prohibits "a person who intentionally and unjustifiably causes the death of another...[from] receiv[ing] any property, benefit, or other interest by reason of the death." The attorney cited and enclosed *Dougherty v. Cole, Jr.*, 401 Ill. App. 3d 341 (4th Dist. 2010), for the proposition that a murder defendant found not guilty by reason of insanity has nonetheless caused the victim's death "intentionally and unjustifiably."

19. On November 3, 2015, Snezana Jajic Kaplarevic applied to the Fund on behalf of M.M. for a Minor Child Benefit.

20. In the event that M.M. is entitled to a Minor Child Benefit, the Fund would pay him benefits in the amount of \$3,772.00 per month from February 1, 2014 through the date of his 21st birthday in 2023.

21. On November 30, 2015, Anka applied to the Fund for a Surviving Spouse Pension.

22. In the event that Anka is entitled to a Surviving Spouse Pension, the Fund would pay her benefits in the amount of \$3,595.00 per month from February 1, 2014 through the later of her death or the 60th month of benefit payments.

**COUNT I: JOINDER FOR INTERPLEADER
TO DETERMINE THE BENEFITS PAYABLE ON BEHALF OF ZELJKO**

23. Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3) permits the Fund and Jorgensen to file suit for equitable relief such as interpleader.

24. Federal Rule of Civil Procedure 22 provides that when claims may expose a plaintiff to double liability, the proponents of those claims may be joined as defendants and required to interplead.

25. The competing claims for benefits payable on behalf of Zeljko and the relevant authorities pose complex legal questions including: (1) Whether 755 ILCS 5/2-6 is preempted by ERISA; (2) If there is preemption, whether there is ERISA common law similar to 755 ILCS 5/2-6; (3) Whether one found not guilty by reason of insanity is subject to 755 ILCS 5/2-6 or any similar ERISA common law; and (4) Whether the fact-finder in this case is bound by Judge Brennan's findings in the criminal case against Anka.

26. If the Fund were to attempt to independently determine the merits of the competing claims for benefits and definitively answer all of the above legal questions, it could be exposed to double liability.

WHEREFORE, the Pension Fund and Jorgensen respectfully request the following relief:

- (a) That the Court restrain Anka and the Estate from pursuing the benefits payable on behalf of Zeljko through any action other than this one;
- (b) That the Court require Anka and the Estate to interplead and settle between themselves the question of what benefits the Fund should pay to either Anka or the Estate; and
- (c) That the Fund be discharged of any and all liability to whichever Interpleader Defendant the Court determines is not entitled to benefits.

Respectfully submitted,

/s/ Jeremy M. Barr

Jeremy M. Barr

Attorney for the Plaintiffs

Justin J. Lannoye (ARDC# 6277853)
Jeremy M. Barr (ARDC# 6299047)
DOWD, BLOCH, BENNETT,
CERVONE, AUERBACH & YOKICH
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
(312) 372-1361